



# Public Service Commission

## State of North Dakota

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April 16, 2014

Mr. Jeff Towner  
U.S. Fish and Wildlife Service  
3425 Miriam Avenue  
Bismarck, North Dakota 58501-7926

Dear Mr. Towner:

The ND Public Service Commission will soon be completing its review of Revision 27 to Surface Coal Mining Permit KRSB-8603 which proposes to add 892.2 acres of land to the existing permit area. The acreage being added is located south of the existing permit area in portions of Sections 20, 21, 22 and 23 of T143N, R88W, Mercer County. This revision addition area contains approximately 390 acres of leased federal coal of which approximately 126 acres is recoverable coal. Some of the federal coal was originally leased in 1961 and the lease was modified December 1, 2013 to allow mining on additional acres. The Department of Interior must approve a mine plan modification before the federal coal can be mined. Dakota Westmoreland Corporation and private individuals own the surface of the land overlying the federal coal.

Our review and assessment of the application indicates that no site-specific measures are needed to protect threatened or endangered species in this area since no threatened or endangered species or designated critical habitat exists in the area to be permitted or in the contiguous areas. The addition area is agricultural lands that are currently being farmed or grazed. The following is our written findings and support justification that we anticipate will be part of our approval documentation for Revision No. 27.

**Finding No. 9: The operations will not affect the continued existence of threatened or endangered species or result in the destruction of or adverse modification of their critical habitats [NDAC 69-05.2-10-03 (6) (d)].**

**Surface coal mining and reclamation activities will not adversely affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. No federal threatened or endangered species or designated critical habitats were observed within or contiguous to the proposed permit area.**

**The permit area is located in the primary whooping crane (a listed species) migration corridor where mining and reclamation activities "may affect, but are not likely to adversely affect" this species. The likelihood of whooping cranes occurring in the study area is very low because desirable habitat does not exist. There are 11 acres of linear wetlands present in drainages within the permit addition area but these types of wetlands are not desirable whooping crane habitat. Based on the small wetland acreage that is not desirable whooping crane habitat, the Commission finds that there is no suitable stop-over**

22 RC-13-70 Filed 04/16/2014 Pages: 2  
Letter sent to U.S. Fish and Wildlife Service requesting concurrence on the draft permit finding for threatened and endangered species  
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**habitat for whooping cranes within the permit area. The permit and adjacent area do not contain habitat for other listed species including the Black-footed ferret, Pallid Sturgeon, Least Tern, Piping Plover or Western Prairie Fringed Orchid. The Gray Wolf could conceivably be an occasional migrant visitor to North Dakota and the permit area.**

**The permit addition area does not contain high quality habitat for any of the four species listed as Candidate species to the threatened and endangered species act. A Dakota Skipper butterfly survey was completed by Ronald Allan Royer in the permit area in 2006 and no Dakota Skippers were observed and Mr. Royer concluded that insufficient intact habitat existed for prairie specialist butterflies. Sprague Pipit sightings occurring in 1980 in the wildlife study area but none have been noted since that time. The size and fragmented nature of the tracts of native grassland in the addition area does not provide for desirable habitat for this species. The permit and adjacent area do not contain habitat for the Greater Sage-grouse or Poweshiek Skipperling which are also Candidate species.**

**The fish and wildlife monitoring plan in the permit includes continued surveys for threatened and endangered species and NDAC 69-05.2-13-08 (2) requires the permittee to promptly report to the Commission the presence of any threatened and endangered species and the Commission must then consult with the USFWS and NDGF department to decide whether and under what conditions the operator may proceed. Therefore, this action will not likely adversely affect listed species or designated critical habitat.**

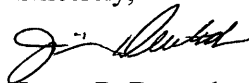
The proposed Revision 27 addition area consists of approximately 406.4 acres of native grassland, 356.7 acres of cropland, 42.5 acres of tame pastureland, 1.1 acres of hayland, 13 acres of woodlands, 5.8 acres of wetlands, 2.9 acres of stockponds and 63.4 acres of roads, farmsteads and other facilities. Most of the acreage included in the revision addition area will not be affected by mining activities and that which is affected will generally be reclaimed to its pre-mining state. All disturbed wetland and woodland acreage will be replaced on an acre for acre basis.

We are requesting your written concurrence with our finding and that no threatened or endangered species protection measures are needed for approval of Revision 27 to Permit KRSB-8603. U.S. Fish and Wildlife Service concurrence is needed as part of the documentation for action on the federal mine plan modification. We are anticipating that Revision 27 will be ready for approval in late May and would appreciate your concurrence by May 9<sup>th</sup>.

A copy of the Revision 27 permit application is enclosed. Please note "The links in the Table of Contents do not work so you will need to open the pdf in the appropriate section of the permit. Language being added with Revision 27 is highlighted in yellow and strike-through language is to be revised."

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division

Enclosure: DVD

cc: Gene Hay – OSM Denver